No. 11,860

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

LEE FONG FOOK,

Appellant,

vs.

I. F. WIXON, District Director, Immigration and Naturalization Service, Port of San Francisco,

Appellee.

BRIEF FOR APPELLANT.

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JURISDICTIONAL STATEMENT.

Appellant, claiming American citizenship, was held in detention in San Francisco by appellee pending hearing upon his right to enter the United States with his wife.

He caused to be filed a petition for a writ of habeas corpus with the District Court of the United States in and for the Northern District of California, Southern Division (T. 2). This Court has jurisdiction of said habeas corpus proceedings under 28 U.S.C. sections 451-453.

Jurisdiction to review the final orders of the District Court denying appellant's petition for writ of

habeas corpus (T. 31, 35, 36) is conferred upon this Court by 28 U.S.C. Sections 463 and 225. Appeals from the orders of the District Court have been duly filed (T. 37, 38).

STATEMENT OF THE CASE.

Appellant, honorably discharged veteran of the World War (T. 41) holding a final judgment of the Superior Court of the State of California in and for the City and County of San Francisco duly adjudicating his birth in San Francisco on April 6, 1901 (T. 41), arrived in San Francisco with his wife on August 25, 1947 (T. 3, 26). "At least from early childhood, he was continuously a resident of the United States." "His Certificate of Discharge recites that he was born in San Francisco, State of California, and was 41½ years of age at time of enlistment". "Indisputably he has lived in the United States continuously from very early youth. He served honorably in the Armed Forces. He was accepted in the Armed Forces as an American citizen" (Opinion District Court, T. 28, 33, 43). Pending proceedings before appellee, he caused to be filed his petition for writ of habeas corpus upon a number of grounds. The only ground material upon this appeal is the first ground of his petition (T. 2-4, 11-15). The following questions arise:

1. Is the final judgment of the Superior Court of the State of California under the full faith and credit statute absolutely and conclusively binding upon the Federal Courts?

2. Is citizenship in the United States conferred upon appellant by the Constitution, Article XIV, Section 1?

3. Does such final judgment establish at least a *prima facie* case in favor of appellant?

SPECIFICATION OF ERRORS.

1. The District Court erred in denying the petition of appellant for writ of habeas corpus and remanding him to the custody of appellee.

2. The District Court erred in refusing to release appellant from the custody of appellee unconditionally and without day, under the first ground of his petition for a writ of habeas corpus.

3. The District Court erred in holding: "in my opinion the decree of the State Court is evidence of the petitioner's birthplace but not conclusive proof of his citizenship" (T. 31).

4. The District Court erred in not holding that the judgment of the Superior Court of the State of California was conclusive proof of appellant's birth in San Francisco, California and therefore proof of his citizenship of the State and by constitutional provision his citizenship of the United States.

5. If we are in error in 4 above, the District Court erred in not holding that the judgment of the Superior Court of the State of California was *prima facie* evidence of appellant's birth in San Francisco.

SUMMARY OF THE ARGUMENT.

The case arises in the Immigration Service. It could have arisen in a different environment. The untold thousands, possibly hundreds of thousands, of judgments under the California statute establishing the fact of birth rendered in California courts in recent years were not necessarily instituted for the purpose of establishing citizenship. The statute is not a *naturalization* statute. Trust companies are interested for the purpose of determining age. National and State Social Security services are interested to determine when benefits are to be paid. War industries were obligated to secure proof of citizenship for employees and judgments to establish place and time of birth were the usual proof, and thus a Federal purpose was subserved.

The question at bar therefore resolves itself to this: Is the judgment of the courts of California absolutely binding upon Federal courts under the full faith and credit statute and the Constitution?

The distinguished Judge of the District Court predicated his decision upon the proposition that in the administration of laws of the United States which it alone enforces, since the United States was not a party to the state court proceeding and did not consent thereto, that therefore it is not bound by the state court adjudication (T. 30).

In other areas of law, such as bankruptcy, naturalization before June 29, 1906, the administration of the Internal Revenue Acts, and actions for forfeiture

under Congressional legislation for registry of ships, it has been held that the United States is bound by state adjudication. There is no reason in principle why it should not be bound by the state court judgment involved here.

We further urge that there is no power vested in the Immigration service to reverse a final judgment of a state, granting state citizenship.

ARGUMENT.

1. THE FULL FAITH AND CREDIT STATUTE, 28 U.S.C.A., SECTION 687, REQUIRES THAT THE JUDGMENT OF THE STATE COURT BE GIVEN FULL FAITH AND CREDIT IN FEDERAL COURTS.

Chapter 8, Section 10600-10607 of the Health and Safety Code of the State of California is the statutory predicate for the judgment in this case. Section 51, Political Code of California in force since 1872, provides that all persons born in this state and residing within it, with certain exceptions, are citizens of the state.

It has not been contended that either of these statutes is unconstitutional or that the state is without power to determine who of its inhabitants were born here and when. This state and others have passed like comprehensive statutes. As far as California is concerned, the proceeding is, under Section 10602, an *adversary* one. It is required that the District Attorney of the county in which the petition is filed be served, and he may appear in opposition.

This area of legislation has *never* been entered by the United States with full power to act through Federal Statutes and Bureaus; it has nevertheless permitted the states to make these determinations, as made in the case of appellant, and has provided no forum in its courts where like relief may be granted.

The fact that fraud may sometimes eventuate under the present condition is a matter for legislative cognizance. It does not change the law.

U. S. v. DiRe, Vol. 68, No. 4, Supreme Court Reporter, Jan. 15, 1948, 222, Par. V, p. 229.

Under the California Statute, however, service is made upon the District Attorney who of course has access to and contact with all investigating agencies and interested departments, State and Federal, and who, it must be assumed, will fully perform necessary duties in the public interest.

Reasons for obtaining these judgments are infinite. Some are for the purpose of determining when monies are due under a trust agreement or like document; some for pension purposes or social security benefits under State and National statutes; some to obtain work during the War in shipyards, airplane factories and in atomic bomb projects, some to get passports. The reason cannot be anticipated in the law, or by the courts. The Statute makes no limitation on this point.

Prior to the repeal of the exclusion laws (December 17, 1943), Chinese sought in the Immigration and Naturalization Service a pre-investigation of status,

eventuating in the issuance of "Form 430", for the purpose of returning here without difficulty. Since the repeal, that Service is without authority to make such investigations. Therefore, some relatively few Chinese went into the courts of the state for a judgment similar to the one involved here, to obtain a passport. The State statute of course is not a naturalization statute.

Under the full faith and credit statute, Section 28 U.S.C.A., Section 687, the constitutional provision for full faith and credit (Article IV, Section 1, of the Constitution) has been extended to the Federal courts.

Huron Corp. v. Lincoln Co., 312 U.S. 183, 193, 85 L.Ed. 725, 731;

Mills v. Duryee, 7 Cranch 481, 485, 3 L.Ed. 411, 413;

Dong Yee Yuen v. Bonham, Dist. Court, Western District of Washington, Opinion attached to Petition (T. 11-15);

In re Ross, 48 Fed. Supp. 815.

In *Mills v. Duryee,* supra, the United States Supreme Court said:

> "It is manifest however that the Constitution contemplated a power in Congress to give a conclusive effect to such judgments. And we can perceive no rational interpretation of the act of Congress, unless it declares a judgment conclusive when a court of the particular state where it is rendered would pronounce the same decision."

In *In re Ross,* supra, a veteran was adjudicated insane by judgment of an Arizona State court and was hospitalized by the Veterans' Administration in Oregon. The court stated, page 816:

> "This court is bound, as are other courts sitting in Oregon, to give full faith and credit to the judgment of the Arizona court."

The attitude of the courts of California with reference to judgments of this type and their conclusive effect is indicated in *Tinn v. U. S. District Attorney,* 148 Cal. 773, a naturalization case, where Tinn, an Englishman, consented that the order be vacated and it was vacated. However upon certiorari the order was annulled.

In the *Dong Yee Yuen* case, supra, where the factual situation is identical with the case at bar, the court announced its complete approval of the position of appellant. The United States District Attorney emphatically agreed (T. 12). No appeal was taken.

Prior to June 29, 1906, the United States was not a party to a naturalization proceeding (8 U.S.C.A., Section 734(d), page 731). Jurisdiction has been conferred upon state courts by various statutes to naturalize aliens.

> Act of March 26, 1790, Chapter 31, Stat. at large 103;
> *Tutun v. U. S.,* 270 U.S. 568, 70 L.Ed. 738;
> *In re Acorn,* 1 Fed. Cas. No. 29.

In fact the Government was not only not a party, but proceedings under the then rules were highly in-

formal, and naturalization judgments were granted on *ex parte* applications. Illustrative cases of such informality follow:

U. S. v. Norsch, 42 Fed. 417, 418;

Stark v. Chesapeake Ins. Co., 7 Cranch 420, 3 L.Ed. 391;

In re Acorn, 1 Fed. Cases No. 29.

Therefore until the entire structure of naturalization was changed by the Act of June 29, 1906, the position of the Government vis-a-vis a judgment of naturalization was identical with the position of the Government relative to the State judgment under discussion. Then for the first time did the United States become a party (8 U.S.C.A., Section 734(d)).

In the state of the law prior to June 29, 1906, *In re Acorn* was decided (1 Fed. Cases, No. 29). A statute had been passed by Congress permitting the forfeiture of a vessel for its false registration by one not an American citizen. While the court held that the provisions of a subsequent Congressional enactment were mandatory with reference to the vessel in question, it proceeded to decide the questions raised by the Government in seeking a forfeiture under the prior Congressional Act.

The owner of the vessel was, in the Superior Court of the City of Chicago, naturalized in what was an *ex parte* proceeding, without notice of the Government. The decree of naturalization was granted January 27, 1866. The Government introduced testimony showing that for several years prior, the petitioner resided in

Canada, paid taxes there, and was registered there as a voter in 1863. The court stated, page 55:

> "The proceeding to obtain naturalization is clearly a judicial one. A hearing is required to be had in open court, and the right can be conferred only by the judgment of the court, and upon satisfactory proof. It, therefore, has all the elements of a judgment. That it has the character and attributes of a judgment, and is equally conclusive, the authorities are entirely uniform."

The court held the *ex parte* decree binding upon the Federal Government, even though the decree interfered with and prevented the Government from obtaining a forfeiture for the alleged improper registration of the vessel. This is a field where the Government's right to legislate is paramount under Constitutional authority (Article I, Section 8, U. S. Constitution), to regulate commerce with foreign nations and among the several states.

Pursuant to Article I, Section 8, Constitution of the United States, Congress has the power to lay and collect taxes. Under that prerogative it alone administers internal revenue acts for the collection of income taxes. There are numerous cases where state court judgments are followed despite the fact that they impinged upon or prevented the Government from collecting taxes claimed due.

Blair v. Commissioner of Internal Revenue, 300 U.S. 5, 81 L.Ed. 465;

Hoxey v. Page, 23 Fed. Supp. 905;

Nashville v. Internal Revenue, 136 Fed. (2d) 148;

Letts v. Commissioner of Internal Revenue, 84 Fed. (2d) 760, 762.

In the *Blair* case, supra, a question arose with reference to tax proceedings before the tax court for the taxable year 1923. After the United States Supreme Court denied relief upon certiorari, the taxpayer filed suit in the Illinois courts to determine certain questions of law as to the provisions of a trust involved in proceedings pending and undecided in the tax court with reference to certain taxable years thereafter. The United States Government was not a party to the action.

The court said at pages 9, 469:

> "The question of the validity of the assignments is a question of local law. * * * The decision of the state court upon these questions is final. * * * To derogate from the authority of that conclusion and of the decree it commanded, so far as the question is one of state law, would be wholly unwarranted in the exercise of federal jurisdiction."

In *Hoxey v. Page,* supra, at page 914, the court said with reference to a state decision:

> "Such a decision from such a court is controlling no matter what the effect of it is upon the taxing powers of the United States." (Citing cases.)

In the field of bankruptcy, Congress derives its authority from Article I, Section 8 of the Constitution

authorizing it to establish uniform laws on the subject of bankruptcy. There is nothing in the bankruptcy act that compels the bankruptcy court to follow a state judgment except in the matter of exemptions. While the Bankruptcy Act is a law of the United States which it alone enforces, the rule is undisputed that a judgment of a state court will be followed irrespective of its effect upon the administration of the bankruptcy laws.

In re Nordlight, 3 Fed. Supp. 486;
In re Northrup, 265 Fed. 420.

We earnestly contend therefore that in a system of law such as exists in the United States, closely integrated and highly inter-related (*Claflin v. Houseman,* 93 U.S. 130, 138), the fact that the state judgment might affect the administration of laws invested by the Constitution in Congress does not in principle militate against the binding effect of a state judgment.

The purpose of the California statute is not to impinge upon any field of Federal legislation. If perchance, in a few instances such would be the effect of the state judgment, a judgment rendered within the power of the State and binding upon the State, is nonetheless valid under the full faith and credit clause of the Constitution of the United States and must be given full faith and credit by the Federal courts.

We contend therefore that the decision in *Dong Yee Yuen v. Bonham,* set forth in full in the petition for the writ of habeas corpus herein, which inspired

the first ground set forth in the petition, is unquestionably in harmony with the entire philosophy behind the full faith and credit provision of the Constitution and the statute extending it to the Federal courts.

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2. THE JUDGMENT OF THE STATE COURT ADJUDICATING PETITIONER'S BIRTH IN SAN FRANCISCO CONCLUSIVELY ESTABLISHES HIS STATE CITIZENSHIP. THE CONSTITUTION OF THE UNITED STATES ARTICLE XIV, SECTION 1, ESTABLISHES HIS UNITED STATES CITIZENSHIP.

On July 28, 1868 the 14th Amendment to the Constitution of the United States was adopted, providing that all persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside. In 1872 California provided by Section 51, Political Code, that citizens of the State of California are persons born in this state and residing within it, with certain exceptions. Thereafter various acts permitted inhabitants of the State to go into state courts of general jurisdiction to prove the date and place of birth. The latest legislation appears in Chapter 8, Sections 10600-10607, of the Health and Safety Code of the State of California. In the *Slaughter House Cases,* 16 Wall. 36, 21 L.Ed. 394, 408, it is said:

> "* * * The distinction between citizenship of the United States and citizenship of a State is clearly recognized and established. * * * It is quite clear then, that there is a citizenship of the United

States and a citizenship of a State, which are distinct from each other and which depend upon different characteristics or circumstances in the individual."

The State of California, a sovereign state, is fully empowered to pass upon and determine who are its citizens. It cannot be sued without its consent but it waived its immunity by permitting its inhabitants to go into its courts by petition to determine the fact of their birth, to serve its representative, the District Attorney, appointed by statute to protect its interests and empowering him to oppose such petition. The proceeding therefore being one adversary to the State, the adjudication of the State Court, when final, is absolutely binding upon the State of California subject to be set aside in the manner and by procedure recognized by law.

Tinn v. U. S. District Attorney, 148 Cal. 773.

The judgment therefore of the California court establishes that the party is a citizen of the State of California and was born in California. He then acquires United States citizenship not by force of any Federal Court or Federal Statute but by virtue of the Constitution of the United States (Art. XIV, Sec. 1).

In re Gogal, Vol. 75, No. 2, Fed. Supp. March 8, 1948—268 at 271, declares:

"A person who is born in the United States, regardless of the citizenship of his parents, becomes an American citizen not by gift of Congress but by force of the Constitution. U.S.C.A., Constitutional Amendment 14, Section 1."

Therefore it appears manifest that California, being bound by its own judgment duly declaring a person to be a citizen of California, and the Constitution of the United States then granting United States citizenship to him, there is no power in an administrative agency or court to deprive him of the United States citizenship conferred by the Constitution of the United States.

> "The power of naturalization vested in Congress by the Constitution, is the power to confer citizenship, not a power to take it away."
>
> *In re Gogal,* supra.

By parity of reasoning the Immigration Service is without power under any authority vested in it to take away citizenship from any man duly adjudicated to be a citizen of the State. It is utterly without power to denaturalize. *Where California by solemn judgment clothes a person with State citizenship the Immigration Service is without power to reverse the judgment, strip that citizenship from him and declare that he is not a citizen of the State of California.*

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3. THE JUDGMENT OF THE STATE COURT IS AT LEAST PRIMA FACIE EVIDENCE OF THE FACTS DECREED THEREIN.

We seriously contend the correctness of our views expressed herein, but if in complete error, which we do not admit, we feel that the District Court should have held as stated in 3 above. The decision states (T-31):

> "* * * The decree of the state court is evidence of petitioner's birthplace but not conclusive proof of his citizenship * * * and the burden of proving that citizenship is upon the person seeking entry."

In this connection it must be remembered that boards of inquiry in the Immigration Service are composed of gentlemen of ability, but they are laymen. To say that the decree is evidence, without defining its weight, is to furnish no guide whatsoever as a practical matter, to the Immigration Service and ignores the legal problem of the burden of proof.

It has been held in a long line of cases that a prior determination of citizenship raises a *prima facie* case in favor of the alleged alien, whether in deportation or exclusion, though the determination is made by an administrative body, such as the Immigration and Naturalization Service.

> *Leong Quai Yin v. U. S.,* 31 Fed. (2d) 738;
> *Lau Hu Yuen v. U. S.,* 85 Fed. (2d) 327;
> *Chun Kock Quon v. Proctor,* 92 Fed. (2d) 326;
> *Yuen Boo Ming v. U. S.,* 103 Fed. (2d) 355.

This being the rule with reference to a prior determination by an administrative agency, with how much more force is the rule applicable, where the determination is made by a sovereign state acting within Constitutional powers after service of process in accordance with law.

While the law does not require it, the practice of the state courts is to compel production of corroborating

evidence to the facts surrounding the birth and not to rely on the uncorroborated testimony of the petitioner. The Immigration Service is not an appellate department of California courts. A judgment of a court of competent jurisdiction is of equal dignity with the determination of an administrative body.

It is therefore respectfully submitted that the California statute is in no wise a naturalization statute; that the case could have arisen under an infinite number of facts and under a different environment; that said judgment is unconditional and conclusive for all purposes; that the judgment of the California court was rendered pursuant to its Constitutional authority and entitled to full faith and credit by the Federal courts; that the California judgment establishes State citizenship, United States citizenship is conferred by the Constitution; that the Immigration Service is without authority to divest petitioner of the state citizenship granted by a sovereign state.

In other fields of law, where exclusive jurisdiction is invested by the Constitution in Congress, state judgments have not been lightly regarded but have been given full force and effect. Those fields have been discussed above. The area that California has entered in passing the legislation under which the judgment here is involved was rendered is an area that Congress has not entered. Congress *can* enter it, and pursuant to Constitutional authority, any act it may pass would be paramount. It has not done so. It must be assumed that Congress asserts no objection to this type of legislation and the results that flow therefrom.

We contend, therefore, that petitioner should have been unconditionally released from custody upon the first ground of his petition; and that the judgment of the District Court with reference to that ground should be reversed and appellant discharged.

Dated, San Francisco,
March 24, 1948.

Respectfully submitted,
GUS C. RINGOLE,
Attorney for Appellant.